

EXHIBIT 56

1
2 IN THE UNITED STATES DISTRICT COURT
3 DISTRICT OF MINNESOTA

4 IN THE MATTER OF)

5 IN RE BAIR HUGGER FORCED AIR)
WARMING)

6 PRODUCTS LIABILITY LITIGATION)

7 Plaintiff,)

8 v.)

9 3M COMPANY AND ARIZANT)
HEALTHCARE INC.)

10 Defendant.)

11 DEPOSITION OF PAUL MCGOVERN

12 VOLUME II

13 Thursday, January 5, 2017

14 AT: FAEGRE BAKER DANIELS LLP

15 Taken at:

16 7 Pilgrim Street

London EC4V 6LB

17 United Kingdom

18
19
20 Court Reporter:

21 Louise Pepper: Accredited Real-time Reporter

22 Videographer: Simon Addinsell

23
24
25 JOB NO. 117121

1
2 APPEARANCES
3 Appearing for the Plaintiff:

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8

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17 Minneapolis, MN 55415

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22 Appearing for the Witness:

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25 FORSTERS
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London W1J 5LS

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2 Examination by MR. SACCHET239
3 Examination by MR. C. GORDON459

4 EXHIBIT INDEX

5 Exhibit 1 Email chain between P.263
6 McGovern and M. Albrecht,
7 Bates stamped Albrecht_0016487
8 Exhibit 2 Email chain between Mark287
9 Albrecht, Paul McGovern, Mike
10 Reed and others, dated 30 June
11 to 3 July, 2010
12 Exhibit 3 Forced Air Warning289
13 Demonstration DVD
14 Exhibit 4 CDC document entitled298
15 "Healthcare Infection Control
16 Practices Advisory Committee
17 Record of the Proceedings",
18 dated November 5-6, 2015,
19 previously marked as Exhibit
20 208, Bates stamped
21 3MBH01344612-01344685
22 Exhibit 5 Document entitled306
23 "Forced Air Warning (FAW) and
24 Surgical Site Contamination
25 First Draft" dated 27/9/09
Exhibit 6 Document entitled "Do308
Forced Air Warning Devices
Increase Bacterial
Contamination of Operative
Field? - Simulated
experimental analysis".
Exhibit 7 Email chain dated 8-11309
November, 2009, subject line:
"FAW"
Exhibit 8 Document Bates stamped316
3MBH00107863-00107870

1 Exhibit 9 Document entitled "Do324
2 Forced Air Warning Devices
3 Increase Bacterial
4 Contamination of Operative
5 Field? - Simulated experiment
6 analysis".
7 Exhibit 10 Email chain between336
8 Paul McGovern and Val
9 Edwards-Jones "Re Saturday",
10 dated 26 November - 20
11 December 2009
12 Exhibit 11 Email chain between337
13 Paul McGovern, David Leaper,
14 Andrew Sprowson and Thomas
15 Symes, "Prof David Leaper
16 Visit", dated 10 September - 2
17 December 2009
18 Exhibit 12 Email chain between342
19 Paul McGovern and Mike Reed,
20 dated 21 February 2010,
21 "Laminar flow tests".
22 Exhibit 13 Article co-published by347
23 Paul McGovern and others,
24 entitled "Forced-air warming
25 and ultra-clean ventilation do
not mix." Bates stamped
Belani_000190-000197
Exhibit 14 Article entitled353
"Patient Warming Excess Heat:
The Effects on Orthopedic
Operating Room Ventilation
Performance", Bates stamped
Belani_000040-000045
Exhibit 15 Email chain between359
Mark Albrecht, Paul McGovern
and others, dated 1 February
2011, "Manuscript with updated
joint infection data covering
an additional 200 or so".
Exhibit 16 Excel spreadsheet with365
data analysis

1 Exhibit 17 Email chain between372
2 Mark Albrecht, Mike Reed, Paul
3 McGovern and others, dated 18
4 February - 1 March 2011,
5 "Signatures on Transmittal
6 Letter".
7 Exhibit 18 Email chain between373
8 Paul McGovern and Mark
9 Albrecht, dated 19 May - 23
10 May, 2011, "Fwd: JBJS [BR] log
11 No. 27124 - Invitation to
12 resubmit
13 Exhibit 19 Email chain "Re382
14 McGovern" between Robin
15 Humble, Scott Augustino, Paul
16 McGovern and others plus
17 attachment entitled "Observed
18 reduction in periprosthetic
19 joint infections: Antibiotics
20 or warming technique?", dated
21 25 March - 17 June 2016.
22 Exhibit 20 Journal of Bone and391
23 Joint Surgery document
24 entitled "Wound Complications
25 Following Rivaroxaban
Administration".
Exhibit 21 Paper entitled "Return396
to theatre following total hip
and knee replacement, before
and after the introduction of
rivaroxaban".
Exhibit 22 Journal of403
Tissueviability paper entitled
"A prospective randomised
study comparing the jubilee
dressing method to a standard
adhesive dressing for total
hip and knee replacements",
authored by Neil G. Burke and
others.

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1 Exhibit 23 Email chain between410
 2 Mark Albrecht and Mike Reed,
 3 "Full workup of stats you
 4 requested", dated 29 November,
 5 2011.
 6 Exhibit 24 Email from Mark416
 7 Albrecht to Scott Augustine,
 8 with attachment, dated
 9 11/22/2015, Bates stamped
 10 Albrecht_0002079-0002086
 11 Exhibit 25 Anesthesia & Analgesia445
 12 document entitled "Patient
 13 Warming Excess Heat: Effects
 14 on OR Ventilation Performance
 15 During Total Knee
 16 Replacement", Bates stamped
 17 Belani_000002-000039
 18 Exhibit 26 Email from Mark454
 19 Albrecht to Paul McGovern and
 20 others, "Fwd: A&A Decision for
 21 MS#: AA-D-11-01334", dated 25
 22 October 2011
 23 Exhibit 27 Email chain between455
 24 Mark Albrecht, Mike Reed and
 25 others, "Fwd: A&A DEcision for
 MS#: AA-D-11-01334R1", dated
 11 January 2012.
 Exhibit 28 Spreadsheet, Bates461
 stamped
 AUGUSTINE_0005193-0005487
 Exhibit 29 Printout of spreadsheet463
 data
 Exhibit 30 Screenshots of FAW v500
 CWB YouTube video

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1 DR. PAUL MCGOVERN
 2 PROCEEDINGS
 3 THE VIDEOGRAPHER: This is Day 2 of the deposition
 4 of Dr. Paul McGovern. The deposition started yesterday
 5 4 January, today is 5 January 2017, and it is 9:24 a.m.
 6 This is the beginning of DVD 1 in volume 2 of Dr. McGovern's
 7 deposition. Everybody who was in the room yesterday is here
 8 today.
 9 Can I remind the witness he was sworn in
 10 yesterday and is still under oath. Can you --
 11 THE WITNESS: Yes.
 12 THE VIDEOGRAPHER: You're on the record, counsel.
 13 It is 25 past 9.
 14 EXAMINATION BY MR. SACCHET:
 15 BY MR. SACCHET:
 16 Q. Good morning, Dr. McGovern.
 17 A. Good morning.
 18 Q. As I mentioned yesterday, my name is Mr. Sacchet,
 19 and I represent the plaintiffs 3M. Yesterday my learned
 20 friend on the other side reviewed some of the ground rules
 21 for the deposition. I'm going to go through few more today,
 22 just to make sure we're on the same page with respect to the
 23 procedures for our conversation. As you know, I'll be
 24 asking you questions under oath and you'll be responding to
 25 them. If at any time you don't understand a question or if

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1 DR. PAUL MCGOVERN
 2 you don't hear the question, please let me know, okay?
 3 A. Yes.
 4 Q. As was mentioned yesterday, it's best for the
 5 record and the court reporter, if I ask a question, that you
 6 let me finish asking the question before you answer, and
 7 I'll do the same with respect to you in refraining from
 8 asking a question before you've finished your answer.
 9 Please provide audible "Yes" or "No" answers with respect to
 10 the questions as opposed to a nodding or shaking of the
 11 head. Is that agreeable?
 12 A. Yes.
 13 Q. And if at any time you need a break, just let me
 14 know, and I'll find an appropriate spot to pause.
 15 A. Sure.
 16 Q. Before we jump into your background, with respect
 17 to your educational and professional history, just a few
 18 preliminary items. You've never met me before, have you?
 19 A. Not before yesterday, no.
 20 Q. And prior to yesterday, you'd never spoken to me
 21 before, be it via e-mail or phone?
 22 A. That is correct.
 23 Q. You've never spoken to any members of the
 24 plaintiff's counsel in this matter, have you?
 25 A. That is correct.

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1 DR. PAUL MCGOVERN
 2 Q. Have you ever spoken to anyone on the side of the
 3 defense, prior to yesterday?
 4 A. I'd received communications from various people on
 5 the side of the defense. I have only communicated with them
 6 through my lawyers.
 7 Q. Okay. Do you recall who those individuals were
 8 that attended the --
 9 A. Stephen Llewellyn, from Faeger Baker Daniels.
 10 I received a LinkedIn message from a lawyer in the United
 11 States, but I don't remember their name.
 12 Q. Do you recall the content of the message?
 13 A. It was similar to the initial contact from Stephen
 14 Llewellyn, saying that 3M would like to depose me, and
 15 asking me to get back in touch to arrange that.
 16 Q. And did you get back in touch to arrange that?
 17 A. I did not reply to the LinkedIn message at all, and
 18 I replied to Stephen Llewellyn through my lawyers when
 19 I arranged legal representation.
 20 Q. Okay. So other than contact via your attorney,
 21 you've had no personal contact with anyone on the other
 22 side?
 23 A. That is correct.
 24 Q. I know you spoke a little bit yesterday about your
 25 background as well, and I'm going to review some of that

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1 DR. PAUL MCGOVERN
 2 conduct the study, but I didn't receive any remuneration
 3 myself. My expenses were paid for this study, but -- most
 4 of them, not all, but I didn't receive payment for my
 5 involvement in this study.
 6 MR. SACCHET: Let's take a break.
 7 THE VIDEOGRAPHER: Shall I change the tape now,
 8 or -- we've got 20 minutes.
 9 MR. SACCHET: Why don't you leave it in?
 10 THE VIDEOGRAPHER: Going all off the record at
 11 eleven minutes past four.
 12 (4:12 p.m.)
 13 (Break taken.)
 14 (4:18 p.m.)
 15 THE VIDEOGRAPHER: Back on the record at eighteen
 16 minutes past four.
 17 MR. SACCHET: Mr. McGovern, at this point in time
 18 I pass you, as the witness, to Mr. Gordon for him to finish
 19 the remaining part of his examination if he so wishes, and
 20 I reserve the rest of my time to respond if necessary.
 21 MR. C. GORDON: I'm sorry, we should have done
 22 that in the break.
 23 THE VIDEOGRAPHER: Going off the record at
 24 nineteen minutes past four.
 25 (4:19. p.m.)

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1 DR. PAUL MCGOVERN
 2 infection data that went into the 2011 paper.
 3 A. Yes.
 4 Q. And I believe you were asked if Mr. Reed had
 5 collected as much data as possible, and you had said -- you
 6 had affirmed that that was your understanding.
 7 A. Yes.
 8 Q. Okay? And you agreed with the statement that no
 9 attempt to -- there was no attempt to artificially limit the
 10 data?
 11 A. None that I know of.
 12 Q. Okay. Could you take a look at exhibit 16, please.
 13 A. Yes.
 14 Q. The first date on exhibit 16 appears to be from
 15 October 2007; is that right?
 16 A. Yes.
 17 Q. And the actual study period of what you reported
 18 started in July 2008; right?
 19 A. Yes.
 20 Q. So in fact there were nine months of data that you
 21 all had, prior to when you decided to start the study
 22 period; right?
 23 A. I don't know if that's the case.
 24 MR. SACCHET: Objection to foundation.
 25 (Reporter clarification.)

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1 DR. PAUL MCGOVERN
 2 (Break taken.)
 3 (4:20 p.m.)
 4 THE VIDEOGRAPHER: Back on the record at twenty
 5 past four. This is the end of DVD 3 in volume 1 of the
 6 deposition of Dr. Paul McGovern, going off the record at
 7 twenty past four.
 8 (4:20 p.m.)
 9 (Break taken.)
 10 (4:34 p.m.)
 11 THE VIDEOGRAPHER: This is the beginning of DVD 4
 12 in volume 2 of the deposition of Dr. Paul McGovern. We're
 13 back on the record at 2:34. Andrew Head has left the
 14 deposition and been replaced by Bryan Shacklady.
 15 THE WITNESS: It's 4:34.
 16 THE VIDEOGRAPHER: Did I say 4:34?
 17 THE WITNESS: You said 2:34.
 18 THE VIDEOGRAPHER: It's 4:34. Thank you very much
 19 for the correction. Thank you.
 20 MR. C. GORDON: It's 2:34 somewhere.
 21 EXAMINATION BY MR. C. GORDON:
 22 BY MR. C. GORDON:
 23 Q. Dr. McGovern, I hopefully have a few questions to
 24 follow up from some of the things you were asked. Earlier
 25 today you were asked regarding the collection of the

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1 DR. PAUL MCGOVERN
 2 BY MR. C. GORDON:
 3 Q. Let me show you what's been marked as exhibit 28.
 4 (Exhibit 28 marked for identification)
 5 MR. SACCHET: Just for the record, I'm going to
 6 have a standing objection of assumes facts not in evidence
 7 with respect to this document.
 8 BY MR. C. GORDON:
 9 Q. This is a printout of a long spreadsheet, so
 10 there -- sort of track the numbers; you have to follow them
 11 all the way through. But the very first one on your
 12 exhibit 16 was a 72-year old hip on October 30, 2007. And
 13 if you turn ahead to page marked at the bottom
 14 Augustine_0005198 --
 15 A. Yes.
 16 Q. Are you already ahead of me?
 17 A. 5198, yes.
 18 Q. And the 30 October 2007, there were several
 19 procedures performed, but I think, if we look over at the
 20 procedure listed as 145, that would -- does that correspond
 21 to the one you've got there?
 22 MR. SACCHET: Object to form.
 23 A. It is not possible to say with certainty, because
 24 there aren't enough data points to identify an individual
 25 patient. However, the data in row 145 of exhibit 28